

libraries, the Maine State Library, and the Maine Law and Legislative Reference Library.

January 5 Order at 7. We further described "public libraries as defined by statute" as:

- All libraries described in 27 M.R.S.A. §§ 101, 102 and 106;
- All libraries that are defined in 27 M.R.S.A. § 110(10) and that are members of a "library district" as defined and described in 27 M.R.S.A. §§ 110(7) and 114(113); and
- All "area reference and resource centers" and "research centers," as defined in 27 M.R.S.A. §§ 110(2) and (12), provided that they are also "public libraries" as described in 27 M.R.S.A. § 110(10).

January 5 Order at 8; February 13 Order at 6.

The first category of libraries in sections 101, 102 and 106 are free public libraries established by towns, village corporations or controlled by associations assisted by towns. This category includes 258 libraries. The third category is area reference and resource centers and research centers as defined by sections 110(2) and 110(12). According to the Advisory Board, subsequent information from the State Librarian indicates that no such entities currently exist.

The second category is libraries as defined in section 110(10) that are members of a library district. Section 110(10) includes any library open to all persons regardless of its source of financial support. Library districts include any type of library in a given geographic area that opts to become a member of that district. This category includes hospital libraries, state agency libraries, historical society libraries and private college libraries. We stated in our January 5 Order that we did not intend to include these types of libraries at this time. *Id.* at 7.

Based on this information, we agree with the Advisory Board's recommendation that categories 2 and 3 listed above be eliminated from the definition of public libraries as defined by statute. Therefore, for purposes of our Order, the definition of a library will be:

1. The Maine State Library, the Maine Law and Legislative Reference Library, county law libraries

and libraries in publicly-funded institutions of higher learning; and

2. All libraries described in 27 M.R.S.A. §§ 101, 102 and 106.

We expect to revisit this issue once we have gained more experience with the Plan and a better understanding of its costs.

B. Computers

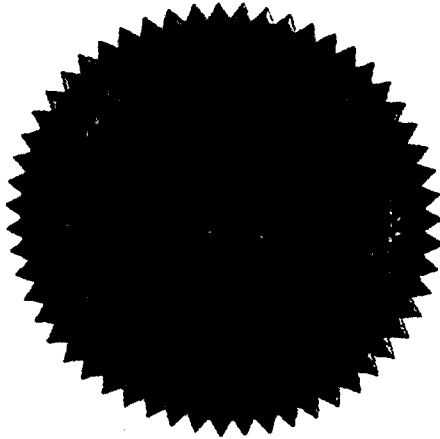
Our January 5 Order allowed libraries and schools without a computer capable of connecting to the NYNEX Standard Access Tier Packages or approved alternative package, to receive up to \$3,000 for one computer per institution. The Board, after looking at the possible need for computers, has recommended that schools and libraries without a computer of certain minimum capabilities (as established by the Board) be eligible for a grant of \$2,000. Institutions with only one computer with limited capabilities would be eligible for a \$600 grant to upgrade its computer. We approve this change as it appears that \$2,000 will likely be adequate for most new computer purchases. This will also permit part of the \$500,000 designated for computers to be distributed to a greater number of institutions, particularly for upgrades.

Accordingly, it is

O R D E R E D

1. That the Schools and Libraries Advisory Board should proceed to implement services for libraries and schools as set forth in the Plan dated March 29, 1996;
2. That the definition of library for purposes of our Orders in Docket No. 94-254 and Docket No. 94-123 of January 5, 1996 and February 16, 1996 will be limited as set forth in the body of this Order;
3. That grants for computers as described in our Order in Docket Nos. 94-123 and 94-254 of January 5, 1996, will be limited to \$2,000 for new computers and \$600 for upgrades.

Dated at Augusta, Maine, this 2nd day of April, 1996.



BY ORDER OF THE COMMISSION

Christopher P. Simpson
Christopher P. Simpson
Administrative Director

COMMISSIONERS VOTING FOR:

Welch
Nugent
Hunt



NEWS RELEASE

STATE OF MAINE
Public Utilities Commission

AUGUSTA
04333

For _____

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The Maine Public Utilities Commission Broadens the Eligibility of Its Plan to Interconnect Maine's Schools and Libraries

During its deliberations on February 12, 1996, the Public Utilities Commission considered issues relating to the implementation of the Commission's plan to interconnect Maine's schools and libraries. The plan, ordered by the Commission in the last NYNEX rate case, was first developed by NYNEX in conjunction with school and library representatives and had been modified by the Commission (in its January 5, 1996 Order) to help ensure that the available funds provided the greatest possible benefit. Consistent with the February 12 deliberations, the Commission has issued an order dated February 16, 1996 expanding the definition of eligible schools to include state-approved private schools that are located in Maine, and broadening the availability of equivalent value funding to all eligible schools or libraries regardless of their current level of connection.

Prior to its deliberations, the Commission had held a conference of parties (on February 6) to discuss implementation issues including the relationship of the NYNEX program with the State's proposed ATM system, the definition of eligible schools, and the number of computers per school. Based on the information received during that conference, the Commission decided that it appears all necessary parties are coordinating the ATM efforts with the Commission's plan and that funding for one computer for each school or library that does not currently have one is reasonable.

In response in part to information provided at the February 6 conference, however, the Commission expanded the definition of eligible schools to include all private schools within Maine approved by the State Department of Education. Accordingly, private schools approved for tuition, plus other private schools approved by the State that meet certain health and safety standards and minimum education and teacher certification standards, may participate in the program. This modification adds approximately 82 schools to the program. The February 16 Order makes clear that schools approved for tuition purposes located outside the State of

Maine are not eligible.

The Commission also decided to extend eligibility for services under the program, or for equivalent value funding, to any eligible school or library, even if that school or library already has a connection capable of delivering 56 Kbps service. This action removes the so-called "pioneer penalty" which would have denied resources to schools and libraries that obtained advanced communication services and equipment on their own prior to this program. Those schools and libraries that have already provided for a connection at their own expense can still obtain equivalent funding to be used for future expenses associated with systems equivalent to 56 Kbps service, or can take service directly under the plan.

The Schools and Libraries Advisory Board is planning to hold its first meeting on Wednesday, February 28 from 1:00 to 4:00 p.m. in the Commission's Hearing Room. These meetings are open to the public, although participation may be limited to Board members.

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STATE OF MAINE
PUBLIC UTILITIES COMMISSION

January 5, 1996

ORDER
(SCHOOLS AND LIBRARIES)

PUBLIC UTILITIES COMMISSION
Investigation Into Regulatory
Alternatives for the New England
Telephone and Telegraph Company
d/b/a NYNEX

Docket No. 94-123

FREDERIC A. PEASE ET AL. V.
NEW ENGLAND TELEPHONE AND
TELEGRAPH COMPANY D/B/A NYNEX
Complaint Requesting Commission
Investigation of the Level of Revenues
Being Earned by NYNEX and Determination
of Whether Toll and Local Rates Should
be Reduced

Docket No. 94-254

WELCH, Chairman; NUGENT and HUNT, Commissioners

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I. SUMMARY OF DECISION

In this Order, we approve a plan to provide access to information networks and services to those public libraries and public schools that presently lack adequate access. Under the approved plan, all services or facilities will be provided by or through NYNEX, and NYNEX will supply the funding for the plan up to \$4.0 million per year for five years. The plan includes a NYNEX-provided Backbone Tier and two standard NYNEX-provided Access Tier packages. Included in these Access Tier packages are computers and connection equipment for libraries and schools that do not presently have that equipment. The plan also allows schools or libraries to opt for alternative equivalent value services that can be used as alternatives to the standard Access Tier packages. The alternatives may include access technologies and network functions furnished by NYNEX or other providers (e.g., cable television or interexchange companies).

We are requiring measurement and true-up of costs to evaluate whether this plan satisfies our intent to provide up to \$4.0 million per year for five years for school and library connections. We will require the use of intrastate marginal costs of NYNEX's incremental expenditures for this evaluation. To provide the necessary "seed money" funding, we are ordering NYNEX to continue accruals of \$333,333 monthly into a special account.

To oversee implementation of this plan, we are creating an Advisory Board to assist us by reviewing alternatives available to schools and libraries, and by recommending specific alternatives for our approval. The Advisory Board will comprise two members of the Commission staff, one of whom shall serve as the Board's chairperson, and one representative from each of the following: the Office of the Public Advocate, NYNEX, the New England Cable Television Association, the Maine Department of Education, the Maine library community and Maine internet service providers.

II. BACKGROUND OF PROCEEDING

A. Commission Order; Procedures

In the Order determining the proper level of revenues and earnings for the New England Telephone and Telegraph Company, d/b/a NYNEX, we found that NYNEX should reduce its Maine intrastate revenue requirements by \$14.446 million. The Commission held that up to \$4.0 million of the mandated rate reduction should "be used to reduce rates and/or provide additional services or

equipment to libraries and schools . . . in the belief that significant benefits to the public may be realized by providing limited support for additional access to information network and services." The Commission directed NYNEX, in consultation with other parties, to file a proposal describing how the \$4.0 million could be used to benefit libraries and schools.¹ *Frederic Pease et al. v. New England Telephone and Telegraph Company d/b/a NYNEX*, Docket No. 94-254, Order, May 15, 1995, at 58-59.

NYNEX filed that proposal on July 31, 1995. The New England Cable Television Association (NECTA), a party to this proceeding, filed its own proposal on the same day. By Procedural Order issued on August 4, 1995, parties were asked to file comments addressing certain questions we raised relating to the proposals and any other relevant issues. A Conference of Counsel was held on September 8, 1995 to allow the Commission and parties to discuss the various issues raised by the proposals. Parties and non-parties were afforded an opportunity to file further comments by September 29, 1995. More than 40 entities filed such comments.

B. Description of NYNEX Proposal

NYNEX's July 31 proposal (NYNEX Proposal) resulted from a collaborative effort among NYNEX, the Maine Department of Education, the Maine Library Commission, the Maine Library Association (MLA) and the Maine Educational Media Association with comments from other interested entities. Under the NYNEX proposal, NYNEX would provide a statewide area network connecting individual school and library locations and local area networks. Schools and libraries would directly connect into this backbone via the NYNEX Frame Relay Service (FRS) network. Each school or library would be provided 56 Kbps FRS circuits to connect into the network. Libraries could choose either a 56 Kbps FRS access line or a business line with a modem. For those choosing a business line, there would be a credit of 22 hours per month of intrastate toll usage. Under either option, libraries could also order up to two additional voice-grade access lines at a reduced rate of \$12 per line per month.

¹According to NYNEX's July 31, 1995 filing, its proposal was "the product of extensive collaborative efforts among NYNEX, the Department of Education, the Maine Library Commission, the Maine Library Association and the Maine Educational Media Association." According to this filing, NYNEX was also assisted by comments of PUC Staff, OPA, NECTA, Maine Science & Technology Foundation, and members of the Maine Legislature. NECTA did not join the endorsement but, as explained below, presented its own variation.

A. Eligible Public Schools and Libraries

1. Public Libraries

We adopt a definition of public libraries that we believe is consistent with that proposed by the NYNEX plan and the parties supporting that plan. MLA's August 25, 1995, comments propose that the category include "public libraries as defined by statute, libraries in publicly funded institutions of higher education, the county law libraries, the Maine State Library, and the Maine Law and Legislative Reference Library." We adopt this proposed definition. However, one portion of that definition, "public libraries as defined by statute," is not entirely clear. The statutes that define "free public libraries" are located at 27 M.R.S.A. §§ 101 and 102. In addition, section 106 states that "libraries owned or controlled by corporations, associations or trustees" that receive municipal funding so that its inhabitants may have the "free use of its books" shall be considered a "free public library."

Another, somewhat more expansive, definition of "public library" is contained in 27 M.R.S.A. § 110(10):

10. Public Library. "Public library" means a library freely open to all persons and receives its financial support from a municipality, private association, corporation or group. The above serves the informational, educational and recreational needs of all the residents of the area for which its governing body is responsible.

That definition is only intended to be used in Chapter 4 of Title 27, Regional Library Systems. The primary difference between the section 110(10) definition and those in sections 101, 102 and 106 is that the more generally applicable provisions require municipal funding. Section 110(10) does not.

The MLA comments further state, however:
Many of the Maine libraries which are contributors to the statewide integrated library resource sharing system are presumed to be outside the scope of the Order. These include libraries in medical centers, libraries in museums and historical societies, libraries in private research laboratories, and libraries in privately funded institutions of higher education.

We are generally disposed to adopt the restrictions "presumed" by MLA, at least for the present. We are concerned that the definition in 27 M.R.S.A. § 110(10) would automatically include many entities that should not be included at this time.³ On the other hand, there may be libraries that are generally thought to be "public" in that they have general collections available to the public, but receive no municipal funding. We therefore will adopt a definition of "public libraries" that effectively includes all municipally-funded libraries and those that are part of a regional library system, as well as the others specifically listed in the MLA's proposed definition:

1. The Maine State Library, the Maine Law Library and Legislative Reference Library, county law libraries and libraries in publicly funded institutions of higher learning.
2. All libraries described in 27 M.R.S.A. §§ 101, 102 and 106;
3. All libraries that are defined in 27 M.R.S.A. § 110(10) and that are members of a "library district" as defined and described in 27 M.R.S.A. §§ 110(7) and 114; and
4. All "area reference and resource centers" and "research centers," as defined in 27 M.R.S.A. §§ 110(2) and (12), provided that they are also "public libraries" as described in 27 M.R.S.A. § 110(10).

In their exceptions, the libraries proposed "standards" for inclusion that appear to be similar, but may or may not be identical to the statutory definitions adopted above. Unless problems develop using the statutory definitions, we will rely on the set of definitions we describe above.

³In comments filed in response to the Examiner's Report, the Maine Department of Labor requested inclusion of its "libraries," i.e., the job training information resources available at seven of its regional offices. For the present, the Department's facilities should be included only if they fall within the definition set forth below. In doubtful cases, the Board may recommend whether a particular library is within or outside of the definition we have adopted.

Depending on the availability of funding within the overall limit of \$20.0 million, the Advisory Board may, at some future time, wish to propose a somewhat more expansive definition.

2. Schools

The proposal was limited to "public" schools although no reason was given for that limitation. We were unable to find in the record any proposed definition for "public" schools, despite NYNEX's reference to a definition provided by the "DOE and Library Group." 20-A M.R.S.A. § 1(24) provides a reasonable and clear definition of public schools.⁴ Under that definition, public schools are limited to the grades kindergarten through 12.⁵ For our purpose, we will include within the definition of public schools those private secondary schools that are "private schools approved for tuition purposes." See 20-A M.R.S.A. §§ 1(23) and 2951.

The Office of Maine Catholic Schools filed a comment in response to the Examiners' Report requesting that parochial schools be included in the program. We will not at this time expand the program beyond public schools. We intend to re-examine this issue at the conference described below in Part VIII.

B. Backbone Tier

NYNEX is hereby directed to provide throughout its territory in Maine what has been characterized by NECTA as a Backbone Tier. The Backbone Tier will be the portion of the switched packet network that interconnects individual "access tier" networks and that provides a shared access and gateway to higher level network services. We accept NYNEX's proposal for the following elements to constitute the Backbone Tier:

1. The regional network routers and dial hubs with modems;
2. Six 1.544 Mbps circuits between the regional routers;
3. Thirty-two business lines at the dial hubs; and
4. Shared services including:

⁴Title 20-A M.R.S.A. § 1(24) defines public schools as:

24. **Public school.** "Public school" means a school that is governed by a school board of a school administrative unit and funded primarily with public funds.

⁵A "school board" is the governing body of a "school administrative unit." 20-A M.R.S.A. § 1(28). Its function is to operate "programs in kindergarten and grades 1 to 12" 20-A M.R.S.A. § 1001(8).

- a. Internet and other gateway access,
- b. Training,
- c. Network monitoring,
- d. Help desk, and
- e. University Resources Serving Users State-wide (URSUS) equipment.

C. Access Tier

Individual schools or libraries ("users") shall have an option of the following as the Access Tier:

1. NYNEX 56 Kbps Standard Package

The first Access Tier option consists of a standard package of services and equipment that will be provided entirely by NYNEX and that will include a Frame Relay Service connection with an individual DDS-II 56 Kbps access circuit from the specific school or library to the closest FRS access point, including a local distribution channel, a 56 Kbps port and a 56 Kbps internal Frame Relay Access Device (FRAD). The FRAD will connect a computer to the frame relay transport channels.

Users will also be provided training necessary to use the services. The Advisory Board described in Part VII below shall make recommendations to ensure the training costs and content are appropriate to user needs.⁶

2. NYNEX Business Line and Modem Standard Package

The second Access Tier option consists of one voice-grade business line with 22 hours of intrastate toll usage per month and a V.34 modem that will be used to connect the business line to a computer. Training, although presumably simpler, will be provided pursuant to the same procedures as for the first NYNEX standard package.

⁶NYNEX proposed a specific training program. Comments and exceptions filed by other parties have suggested alternatives, including the provision of training by the University of Maine Computing and Processing Services (CAPS).

3. Alternative Equivalent Value Services

To address concerns such as those stated in Part II.D above, any user, subject to the limitations described below, may choose to receive alternative Access Tier "equivalent value services" in lieu of the NYNEX standard packages. Those services must provide network functions that are equivalent to or better than those provided under the NYNEX standard packages. Funding will be equal to the unseparated (total company) incremental cost to NYNEX of providing a 56 Kbps FRS connection along with a 56 Kbps FRAD, as described in Part III.C.1 above.⁷ Any additional costs must be borne by the customer. A customer choosing the "equivalent value" alternative will be permitted to "pool" or combine its individual alternative equivalent value services with other users to purchase or construct access services for more than one user.

We agree with several commenters who have suggested that NYNEX standard packages might be too technically limited and may not suit users' needs or current equipment configurations. We believe that the alternative described here will allow customers and others to propose innovative alternatives that may provide higher quality and/or cost savings.

The Access Tier services that will be available as an alternative equivalent value services will be provided by or delivered through NYNEX. They may include access technologies and network functions from NYNEX or other providers as approved by the Commission following a recommendation by the Advisory Board as described in Part VII below. To provide reasonable equivalent services to a customer, NYNEX will be required to contract with other suppliers, including other telephone companies, interexchange carriers, cable television

⁷NYNEX should calculate this amount on a location-specific basis, but must do so only if a customer indicates an interest in obtaining an alternative system. The cost calculation shall not include the common transport costs of the FRS network, which are shared among other users of the service. NYNEX shall use total *unseparated* costs for the purpose of determining the benchmark maximum funding level, as well as for any actual cost comparison that must be made (discussed below), because it would be impossible to calculate or even estimate the separations effects prior to knowing actual usage. As explained below, however, we will require NYNEX to use post-separations intrastate incremental costs to determine the total amount of funds expended to provide service to schools and libraries. Any money paid to other providers will be treated as NYNEX expenses and will also be subject to separations.

companies, private or community owned networks, internet service providers (ISPs), or combinations thereof.⁸

As explained in greater detail in Part VII below, requests by users to approve alternative equivalent value Access Tier packages shall be made to the Advisory Board, which shall make a recommendation to the Commission. The Advisory Board shall determine whether alternative equivalent value service proposals are reasonable and whether they provide functions at least equivalent to those of the first NYNEX standard package described in Part III.C.1 above. The Board may also recommend approval of necessary training subject to the overall \$500,000 limit stated in Part VII.B.2 below. Once a proposal has been approved for one user, other users shall be able to choose that alternative without further action by the Board or Commission. The Board shall maintain a list of all approved standard alternatives.

4. Computers

As suggested by commentators, we agree that connectivity to information services requires computers. Representations have been made that many institutions, particularly smaller libraries, presently do not have computers. Therefore, an institution that represents to the Board that it presently does not have a computer that is capable of connecting to either of the NYNEX standard Access Tier Packages, or to an approved alternative package, may receive funding for one computer up to \$3,000 per institution. At the conference described below in Part VIII, we will discuss whether schools with larger student populations should receive funding to buy more than one computer. The customer will select the computer and may obtain it from a source of its choosing. Requests for computers, as well as the software that is necessary for access to information services, shall be reviewed by the Advisory Board. We delegate to the chairperson of the Advisory Board (who will be a Commission Staff member) the authority to approve these requests. The total amount that may be expended for computers during the first year, without further Commission approval, shall be \$500,000.

5. Additional Discounted Access Lines for Libraries

We accept the proposal that public libraries be permitted to obtain one or two business voice-grade access lines at a discounted rate of \$12 per line per month. The stated purpose of this provision is to reduce "existing

⁸Nothing shall preclude NYNEX, on its own initiative or on the request of a customer, from proposing additional alternatives.

costs for telephone services." Some libraries have no telephone service at present. The line or lines included in this provision are in addition to the access line that may be provided pursuant to the second Access Tier standard package described above in Part III.C.2.

6. Free Public Access

We agree with the suggestion of the Education/Libraries and the OPA that the services provided by the approved plan shall be made available to the relevant public on a no-charge basis.⁹

IV. **LEGAL AUTHORITY**

At the Conference of Counsel held on September 8, 1995, and in the procedural order issued on September 15, we requested the parties to provide comments on the following legal question:

Whether the Commission has legal authority to require payments by NYNEX to customers (specifically, schools and libraries) that those customers could use for any purpose, including the purchase of non-NYNEX telecommunications or training services.

Several parties filed comments on this question. Some parties provided arguments that went beyond the question that we raised. As discussed below, we believe that the broader issue argued by those parties is not presently before us. Nevertheless, we discuss those arguments because it is virtually impossible to separate them from the narrower question we asked.

The Commission Advocacy Staff (Staff)¹⁰ argues that we cannot provide funding for customers to spend with alternative suppliers or order NYNEX to make such expenditures. Its argument, however, is based entirely on a more fundamental argument that we cannot order NYNEX to spend money to provide

⁹The "relevant" public for a public library is the patrons it serves for other purposes. The "relevant" public for a school includes its students.

¹⁰In this Order, the Commission's Advocacy Staff is referred to as "Staff." Other Commission staff members, including the Examiners, are assigned to these cases as advisors. The Advocacy Staff functions as a party to the case by presenting evidence and argument, without specific direction from the Commission.

services to the libraries and schools at all, because our power is limited to that stated in 35-A M.R.S.A. § 1306 and the approval of special discounted rates for schools and libraries that are permitted by 35-A M.R.S.A. § 703(1).

We do not believe that that broader question is presently before us, and it may even be finally settled. We issued our final order in the *Pease* case on May 15, 1995. That Order directed NYNEX to propose discounts and/or expenditures on behalf of schools of up to \$4.0 million per year. The deadline for filing motions for reconsideration expired on June 5, 1995. On that date, the American Association of Retired Persons (AARP) filed a Motion for Reconsideration which specifically raised the issue of whether there was sufficient *record support* to justify the Commission's conclusion that up to \$4.0 million of the revenue reduction should be used for the benefit of schools and libraries. No party, including AARP, raised the issue of the Commission's legal authority to order such expenditures on behalf of schools or libraries prior to the expiration of the time to file a motion for reconsideration.¹¹ The May 15 Order is now on appeal to the Maine Supreme Judicial Court sitting as the Law Court. One appellant has attempted to raise the issue, but the Law Court may lack jurisdiction.¹² In any event, we do not consider the issue to be presently before us.¹³

¹¹AARP's motion was denied by operation of Chapter 110, § 1004, which states that if the Commission takes no action on a motion for reconsideration within 20 days, it is denied.

¹²The Commission's authority to order expenditures by NYNEX was not raised by AARP or by Mr. Pease in their respective Notices of Appeal. 35-A M.R.S.A. § 1320 plainly requires an appellant from the Public Utilities Commission to state in its Notice of Appeal the "grounds upon which the order or ruling is claimed to be unlawful." Mr. Pease's Notice of Appeal was filed on August 4, 1995. Subsequently, on October 6, 1995, Mr. Pease filed a purported amendment to his Notice of Appeal. The Commission and NYNEX moved to limit the grounds of appeal by Mr. Pease to those listed in his original August 4 Notice on the ground that the Court lacks jurisdiction because the appellant failed to comply with the statutory requirement.

¹³In its September 27 memorandum at 2 and 7, the Public Advocate appears to argue that the order was lawful because no one had appealed the issue. (The Public Advocate's memorandum was filed prior to Mr. Pease's attempted amendment of his Notice of Appeal.) We find the Public Advocate's proposition rather different from the possibility that the order may be final and therefore not attackable.

Applied to its narrower focus of whether NYNEX can be ordered to make expenditures on non-NYNEX services, we reject Staff's argument. Staff argues that the Commission's powers generally are limited to those provided by statute. *New England Telephone and Telegraph Company v. Public Utilities Commission*, 362 A.2d 741 (1976). Staff believes that in an investigation pursuant to 35-A M.R.S.A. §§ 1302 or 1303, our power is limited to those enumerated in section 1306, e.g., to find that a rate, service, act or practice is unreasonable and to order reasonable rates or reasonable service be substituted or to order a utility to cease an unreasonable act or practice. The Staff overlooks two recent legislative policy directives. The Public Advocate argues that 35-A M.R.S.A. § 7101(2) provides a basis for our order. That subsection states:

2. Economic development. The Legislature further declares and finds that a modern state-of-the-art telecommunications network is essential for the economic health and vitality for the State and for improvement in the quality of life for all Maine citizens. Therefore, it is the goal of the State that all Maine's businesses and citizens should have affordable access to an integrated telecommunication infrastructure capable of providing voice, data and image-based services. The State shall consider policies that:

- A. Encourage economic development;
- B. Employ methods of regulation that encourage the development and deployment of new technologies; and
- C. Encourage acceptable service applications that support economic development initiatives or otherwise improve the well-being of Maine citizens.

We see no reason why the phrase "the State" does not include its agencies, particularly the Public Utilities Commission. The placement of this statute in 35-A lends weight to those conclusions.¹⁴

¹⁴It would make little sense for the Legislature to aim the directive solely at itself. The Legislature should not be presumed to enact laws that in effect direct it to enact other laws.

The Staff's argument also overlooks one of the "conditions" or "objectives" that we must ensure in approving any alternative form of regulation (AFOR). 35-A M.R.S.A. § 9103(7) states:

7. Encourage telecommunications services. The alternative form of regulation must encourage the development, deployment and offering of new telecommunications and related services in the State.

We ordered the libraries' and schools' funding in the *Pease* rate case, rather than in the alternative form of regulation (AFOR) case. Nevertheless, the two proceedings were consolidated and conceptually linked by virtue of the fact that the rate case established the starting point for rates under the AFOR. The parties themselves, in their joint briefing outline approved by the Examiners, proposed to address the issue of funding for schools and libraries in the AFOR case. Moreover, the Order clearly contemplated that the funding be provided for the duration of the AFOR, i.e., up to \$4.0 million during each of the five years of the AFOR. We therefore consider that our Order requiring the funding for schools and libraries is as much a condition of the AFOR as it is part of the rate reduction order and is justified pursuant to the statutory condition of the AFOR statute quoted above.

In addition, 35-A M.R.S.A. § 104 grants the Commission "implied" powers to carry out its "express powers and functions:"

The provisions of this Title shall be interpreted and construed liberally to accomplish the purpose of this Title. The commission has all implied inherent powers under this Title, which are necessary and proper to execute faithfully its express powers and functions specified in this Title.

Sections 7101(2) and 9103(7) state express functions or powers (or even obligations) that the Legislature has granted (or imposed) on this Commission. Under section 104, we have the authority to implement those powers and functions through our ratemaking powers and other regulatory authority over telephone utilities.¹⁵

¹⁵ The Public Advocate also points to our recent Order in *Public Utilities Commission, Re Investigation of Modification of Central Maine Power Company's Electric Lifeline Program For the 1993-1994 Program Year*, Docket No. 93-156, Order (March 10, 1994). In that case, over the objection of CMP, the Commission

For all of these reasons, we conclude that we have the authority to order NYNEX to provide internet and information connection services that in some respects may be provided under contract through or by other entities. We reject the Staff's argument that our statutory powers are limited to those enumerated in section 1306 and in other related ratesetting sections such as 310 and 703(2)(A).

NYNEX purports to address the narrow question of providing funding for customers to use for alternative suppliers of internet and information services. However, its argument is essentially the same as Staff's that the Commission's powers are limited to finding that rates or practices are unreasonable and ordering reasonable rates or practices substituted. Staff and the Public Advocate point out that if NYNEX's argument were accepted, its own proposal might also be illegal, inasmuch as it includes providing equipment itself and provides for certain portions of the service to be supplied by other providers. For reasons similar to our rejection of Staff's argument, we also reject NYNEX's argument.¹⁶

We decide that we have sufficient authority to order NYNEX to implement the plan we have described in Part III above, at least in light of the particular features of that plan. Under the plan, NYNEX must provide schools and libraries with a service, i.e., connecting them to information services. The service will be provided pursuant to two standard plans or by an alternative "equivalent value" plan. Under both the standard plans (as proposed by NYNEX) and under an alternative plan, NYNEX may be required to provide part of the service through an outside supplier. For an alternative plan, NYNEX must contract with an outside supplier to provide part of the service only following: (1) a request by a customer for an alternative method of providing an information connection, (2) an

ordered that recipients of funds under the Electric Lifeline Program (ELP) could use those funds for the purpose of fuel conversions, i.e., for the purchase of a non-electric heating system provided by entities other than CMP. In that Order, we ruled that an ELP recipient may use some or all of its benefit to fund electric reduction measures, including fuel conversions.

¹⁶NECTA also presented arguments in support of its proposal that "equivalent" funding be provided for alternative plans that utilize the services of outside (non-NYNEX) providers. NECTA argues that the Commission can and "in effect" did find that NYNEX's service to schools and libraries was "unreasonable" and, under 35-A M.R.S.A. § 1306(6), can order a reasonable service or practice substituted. NECTA also relies on the "charitable or benevolent rate" provision of 35-A M.R.S.A. § 703(2)(A).

opportunity for NYNEX to propose a less-expensive alternative plan of its own, (3) a recommendation by the Advisory Board that an alternative plan should be approved, and (4) approval by this Commission upon a finding that the alternative plan is reasonable. It is not uncommon for utilities to contract with outside suppliers to provide services that allow the utilities to provide services to their customers in the most efficient manner. Indeed, NYNEX itself has proposed to contract with outside suppliers for certain portions of the standard packages.¹⁷ Moreover, it is our obligation to assure that utilities are "operating as efficiently as possible" in order that they provide their service at rates that are as low as reasonably possible. 35-A M.R.S.A. § 301.

Because of the policy directives in 35-A M.R.S.A. §§ 7101(2) and 9103(7), which we construe to be broad grants of authority, our authority pursuant to 35-A M.R.S.A. § 104, and our ratemaking powers under 35-A M.R.S.A. §§ 101 and 301, to implement express policies, we rule that we have the authority to order NYNEX to provide information connection services in the most reasonable manner possible, including, where necessary and appropriate, through services provided by outside providers.

V. AVAILABILITY IN AREAS SERVED BY INDEPENDENT TELEPHONE COMPANIES

The Telephone Association of Maine (TAM) and NYNEX have requested that all public schools and libraries in the State of Maine, including those served by Independent Telephone Companies (ITCs), should qualify for participation. NYNEX and TAM point out that ITCs participated in the discussion leading to the proposed plan. TAM points out that ITCs serve approximately 40% of the schools and libraries in the State.

Our decision that NYNEX should implement a program for the connection of schools and libraries to information services was made in a NYNEX rate case in which we ordered NYNEX's rates reduced by approximately \$14.4 million annually and that up to \$4 million of that amount (per year) be used for the program. The case did not address the revenue requirements of the independent telephone companies, although it automatically altered their toll rates because ITCs concur in NYNEX's toll rates.

We believe that the potential benefits of this program should be extended to all public libraries and schools in the State, provided that the same plan we have

¹⁷See NYNEX Proposal at 32.

approved for NYNEX shall also apply to the independent telephone companies, and that NYNEX and the ITCs are able to reach agreement about any operational or interconnection issues. We reserve the issue of any ratemaking treatment of any capital costs of expenses incurred by the ITCs. However, in order that those costs may be ascertained, ITCs shall separately account for all capital costs, expenses and revenue effects that are incurred in connecting libraries and schools. NYNEX has agreed that lost revenue (which may be very difficult to ascertain) will not be considered in determining how much of the \$4 million per year (\$20 million over five years) has been spent. We consider this condition also to be applicable to the ITCs.¹⁸

VI. MEASUREMENT AND TRUE-UP

A. Measurement of Costs

To determine what portion of the up to \$4.0 million per year reduction from intrastate revenues has been spent, we will adopt the Staff proposal that NYNEX's incremental costs (investment and expenses) be used for that purpose. In its September 29 comments, NYNEX agreed with the Staff's proposal. NYNEX shall use jurisdictionally intrastate (post-separations) incremental costs. Jurisdictional incremental costs for each category of type of investment will be determined by using the same cost allocation factors from 47 CFR Part 36 that are used to allocate each category of NYNEX's book investments and expenses between the interstate and intrastate jurisdictions. By "incremental," we mean only those reasonable costs that NYNEX has spent on behalf of the schools and libraries.¹⁹ It shall not include amounts that NYNEX has spent or will have spent anyway for network functions needed to provide Frame Relay Services.

NYNEX filed a rate schedule for Frame Relay Services (FRS) on June 28, 1995. The schedules were approved on August 29, 1995 (Docket No. 95-232), and we understand that the equipment, including software, necessary, to provide FRS was in place and functioning at about that time. NYNEX has also implemented FRS in the other states it serves. It therefore appears that

¹⁸In its comments on the Examiners' Report, TAM did not raise any objection to the plan proposed by the Examiners.

¹⁹Under the circumstances explained in Part III.C.3 above, some of the incremental spending may be spent on alternative services for customers that do not want to participate in NYNEX's standard packages. Portions of those alternative services may be provided by cable companies, ISPs and others.

the network functions necessary to provide FRS would have been in place and provisioned in any event, and that expenditures should not be considered for that system as incremental expenditures for schools and libraries. Within 30 days following the issuance of this Order, NYNEX shall file a detailed accounting of the costs it has (or will) incur for the construction of the facilities necessary to provide Frame Relay Services pursuant to the rate schedules approved on August 29, 1995.

NYNEX, in consultation with the Commission Staff, shall make an initial report using the described methodology for the measurement of its cost and/or expenditure by January 1, 1997. NYNEX shall provide its report simultaneously to the Commission and to our Advisory Board for review. The Commission may adjust, revise, modify, or expand the Approved Plan on the basis of that report.

B. Accrual

In our May 15, 1995 Order in Docket No. 94-254, we ordered NYNEX "to establish an account in which it will accrue \$333,333 per month" beginning on June 1, 1995 and continuing "until such time as the Commission approves its proposal to use these amounts." Our objective with respect to these funds is to provide "seed money" to enable users to be connected to advanced information services. Since the need for these funds has not yet been fully resolved, NYNEX will continue to accrue \$333,333 per month into the special account until May 31, 2000 or until recommended otherwise by the Advisory Board and approved by the Commission. We do not presently anticipate that this source of funding will be renewed after the 5-year term.²⁰ Accordingly, schools and libraries should plan for their own funding of these services and equipment after that time.

For planning purposes, although \$333,333 is being accrued monthly into the special account, and although we have stated that "no more than \$4.0 million per year" will be used for this limited support, the Advisory Board should consider that the result of our decision is the allocation of not more than \$20.0 million during the 5-year period ending May 31, 2000 for these purposes. The disbursement of funds need not be limited to \$333,333 monthly or \$4.0 million annually, provided that the five-year \$20.0 million ceiling is not exceeded. It is reasonable to expect that initial up-front costs may exceed those in later years.

²⁰To the extent that the NYNEX plan called for a 7-year period, we decline to adopt it.

We will evaluate the amounts being collected and expended, the appropriateness of the funding mechanisms we are adopting, the overall effectiveness of this process, and the benefit to the general body of ratepayers, during our reviews of the Alternative Form of Regulation we have adopted in Docket No. 94-123.

VII. OVERSIGHT

A. Commission Responsibility

NYNEX in its proposal recommended the creation of an Oversight Board consisting of representatives from the education and library communities, NYNEX, and other parties "that might be identified . . . to oversee the implementation and ongoing management of this project." NYNEX Proposal at 20. The Advocacy Staff, relying primarily on cases decided by the federal courts, argues that the Commission cannot lawfully delegate its regulatory powers to an outside agency or board. The Public Advocate suggests that the Commission has the legal authority to delegate "certain functions" to an outside board. OPA Memorandum and Additional Comments at 18-24.

We do not need to decide this issue. For policy reasons, we believe we should exercise firm control over the expenditure of ratepayer money by a public utility to insure that the public interest is served. Thus, at all times we will retain ultimate responsibility and authority with respect to matters pending before us. We will order the creation of an Advisory Board to assist us with limited, clearly-defined functions necessary for the administration of this plan.

B. Advisory Board

The Advisory Board will have limited functions and shall engage in a collaborative effort to assist us by ensuring that our decisions will be made upon the best information and basis possible. The primary role for our Advisory Board will be to ensure that the needs of all interested parties are considered and represented in the information presented to the Commission for any decision we are asked to reach regarding this plan. We will appoint to the Advisory Board a member representing the Commission's Staff who will act as the Chairperson of the Advisory Board and who shall be responsible to the Commission for the activities of the Advisory Board.

1. Membership

The Commission will appoint a member of its staff as Chairperson of the Advisory Board. Other members of the Advisory Board will be:

- a. a second member of the Commission's Staff;
- b. a representative of the Office of the Public Advocate;
- c. a representative of NYNEX;
- d. a representative from a Maine member of NECTA;
- e. a representative of the Maine Department of Education, appointed by its Commissioner;
- f. a representative of the Maine library community, selected jointly by the Maine Library Commission, the Maine Library Association, and the Maine Educational Media Association; and
- g. a representative of Maine Internet Service Providers (ISPs), selected by the ISPs that have filed comments in Docket No. 94-254.

Members of the Advisory Board shall be selected within 30 days from the date of this Order. The Commission's Administrative Director shall be notified of those selections, any alternate members that may be selected, and of subsequent changes in membership.

2. Duties, Responsibilities, and Authority

The Advisory Board shall develop and recommend for the Commission's approval procedures and timelines for implementing the Approved Plan (Part III above). Those recommendations shall be reported to the Commission within 90 days after the date of this Order.

The Advisory Board shall review any request by school or library users for proposed Access Tier Alternative Equivalent Value Services pursuant to Part III.C.2 above, to ensure those proposals are reasonable and that they provide functions that overall are at least equivalent to those of the first NYNEX standard package described in Part III.C.1.a above. If an alternative supplier is selected, NYNEX should pay (and book as an expense) only the amount of that supplier's proposal up to a maximum of the level of costs for the NYNEX 56 Kbps package, as determined by the Board.